IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 647 of 2003()

SC.212/1999 of ADDL. SESSIONS COURT (ADHOC), KALPETTA

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APPELLANT: ACCUSED

BALAN, S/O.KOCHUKUTTAN, AGED 46 YEARS,
KIDANGANADU VILLAGE, WAYANAD DISTRICT.

BY ADV. SRI.P.K.ABOOBACKER(EDATHALA)

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 647 of 2003

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Dated this the 21st day of February, 2007

J U D G M E N T

The accused in Sessions Case No.212/1999 on the file of Additional Sessions Court (Ad hoc), Kalpetta, is the appellant. He was found guilty of the offence punishable under Section 55(a) of the Abkari Act, in short 'the Act'. Therefore, the appellant was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of rupees one lakh, in default, to undergo rigorous imprisonment for three months. The same is under challenge through this appeal.

2. The prosecution case, in brief, is that on 25/02/1998, the appellant was transporting 60 packets of Karnataka made arrack, in a motorcycle, bearing registration No.T.C.Q 6570, at midnight. PW.6, the Sub Inspector of Police of Meenangadi Police Station, who was on duty along with PW.3, a police constable, arrested the appellant and seized the contraband. The police, therefore, registered the crime and proceeded against the appellant as per the law.

3. The prosecution examined eight witnesses and marked four documents. Five material objects were also identified and marked. It was on appreciation of the facts, that had been placed before the court below, the learned Sessions Judge found the accused guilty, convicted and sentenced him, as stated above.

4. Exhibit P1 is the seizure mahazar, seizing the 60 packets of arrack, attested by PWs.1 and 2. Both of them turned hostile, though they have admitted their signatures in Exhibit P1, as well as on the label affixed on MO.1 sample bottle. MO.2 series are the 54 packets of arrack and MO.3 series are six empty packets, as the arrack in these packets were used for sampling. Exhibit P4 is the chemical analysis report, which shows that the materials sent for chemical analysis was Ethyl Alcohol.

5. Through a statement submitted on 25/03/2003, when the accused was examined under Section 313 of the Code of Criminal Procedure, though he denied the incriminating circumstances appeared against him and put to him by the court below, the accused-appellant had stated that there was a scuffle

between a few persons. He was near to that group. The persons involved in the scuffle had gone away. Thereafter, a police constable had informed the appellant to go to the police station, as the Sub Inspector was calling him. As he was drunk, on that courage, and also as he did not commit any mistake, he declined to go along with the police. After sometime, the Sub Inspector of Police came to the spot, took him forcefully, in a jeep, to Meenangadi Police Station and this false case had been registered against him. He has got no connection with the material objects, involved in this case, produced before the court below. He denied having driven the motorcycle bearing registration No.T.C.Q 6570. According to him, the said motorcycle belonged to one Tamilian. Because of the enmity with the brother of PW.5, the latter gave false evidence against the appellant. He also denied that the motorcycle produced by the police, before the court below, in which he was alleged to have travelled, was not belonging to PW.5. He also denied as having taken the motorcycle from PW.5.

6. As rightly found by the court below, there was no defence evidence, adduced by the appellant, on the points

stated above. There is no material available before this Court to show that he was present at the place, where the festival was going on; that there was an altercation between a group of persons; that the police summoned him; that the police took him forcefully; and about the ownership of the bike. As the appellant put up a defence, the burden to prove that fact is cast on the appellant. This has not been discharged by him.

7. The learned counsel for the appellant, however, submitted that in the light of the hostile evidence of PWs.1 and 2, the evidence of PW.3, the police constable, and PW.6, the Sub Inspector, are insufficient to enter a finding against the appellant. The further submission of the counsel is that there are contradictions in the evidence of PWs.3 and 6, and, therefore, the same may be interpreted and the benefit may be given in favour of the appellant.

8. To substantiate the contention raised, as above, the learned counsel for the appellant has brought to my notice the discrepancies in the evidence of PWs.3 and 6, with regard to the time of arrival of the police party after the occurrence, to the police station as deposed by PW.3 and the deposition of PW.6

that after the occurrence they were involved in registering an another case.

9. The facts involved in a case must be appreciated not only on a particular instance of that case, but after considering the entire circumstances and the facts placed before the court, taken as a whole. The contradictions pointed out may have become material, had there been consequent defence evidence adduced by the appellant, on the contentions advanced by him, through the statement submitted before the court below. Though PWs.1 and 2 turned hostile, as the other contradictions are not materially affecting the prosecution case as such, the same need not be accepted to discard the prosecution version as a whole. When the defence has got an altogether different version, than the one put forward by the prosecution, and the same is not established as per the principles of preponderance of probabilities by the appellant, the accused, the court need not discard altogether the prosecution evidence on the strength of the minor contradictions, here and there. In such circumstances, I find that the contradictions of PWs.3 and 6 are not affecting the prosecution case at all. Hence, I hold that the

material objects were seized at the time and place of occurrence, as deposed by PWs.3 and 6. I find no reason to disbelieve their versions.

10. In the above facts situation, I hold that the learned Sessions Judge was right in holding the accused guilty under Section 55(a) of the Act and convicting him thereunder.

11. The learned counsel for the appellant, at this stage, submitted that the appellant was about 43 years of age at the time of occurrence. He is having family and, if he is incarcerated, his family would be put to difficulties and starvation. Therefore, the counsel prayed that the sentence may be modified and reduced.

12. Section 55(a) of the Act, as it stood till 02/06/1997, prescribes the punishment of imprisonment for a term which may extend to “two years and with fine which shall not be less than twenty-five thousand rupees”. However, this provision had been substituted by Act 16 of 1997, the imprisonment being for a term of ten years and fine being not less than rupees one lakh, with effect from 03/06/1997. Therefore, the punishment now prescribed is very high.

However, considering the nature of the offence, the circumstances of this case and the pleadings of both sides, I modify the sentence from rigorous imprisonment for one year to rigorous imprisonment for a period of six months. However, I sustain the fine amount of rupees one lakh, together with the default sentence imposed by the court below, rigorous imprisonment for three months.

13. The learned Sessions Judge shall issue a modified warrant, as per the sentence of imprisonment, which is reduced as above.

This appeal is partly allowed accordingly.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A. No. 647 of 2003

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J U D G M E N T

21st February, 2007